



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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Released: January 13, 1999

PR Docket No. 93-61
 GN Docket No. 96-228

COMMENT SOUGHT ON SMALL BUSINESS SIZE STANDARDS

In accordance with a recent ruling by the Small Business Administration (SBA), the Commission is seeking further comment on small business size standards adopted for the auction of Location and Monitoring Service (LMS) and Wireless Communications Service (WCS) spectrum. This ruling is detailed in the attached letter from the Administrator of the Small Business Administration. We seek comment on these issues for purposes of obtaining SBA approval of the LMS and WCS size standards. This action will not affect the outcome of the WCS auction or the payment obligations of WCS licensees.

The LMS auction is scheduled to begin on February 23, 1999.¹ In our rules for that auction, we adopted small business size standards and associated bidding credits for LMS to remove entry barriers and ensure the participation of small businesses in the LMS auction and in the provision of service.² We sought comment, in general, on small business size standards for LMS, and one party commented on this issue. This commenter, Comtrak, recommended that the Commission adopt two small business categories in the LMS auction: (1) a "small business" category, for businesses with average gross revenues not to exceed \$10 million; and (2) a "very small business" category, for businesses with average gross revenues not to exceed \$3 million.³ Comtrak also recommended that the Commission rely solely on gross revenues,

¹ See Wireless Telecommunications Bureau Postpones December 15, 1998 Auction Date for 528 Multilateration Location and Monitoring Service Licenses, *Public Notice*, DA 98-2246 (November 10, 1998).

² Amendment of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, FCC 98-157, ¶ 20 (rel. July 14, 1998), 63 Fed. Reg. 40,659 (July 30, 1998) ("*LMS Second Report and Order*"). See also Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, PR Docket No. 93-61, 12 FCC Rcd 13942, ¶ 75 (1997) ("*LMS Further Notice*").

³ Comtrak Comments at 4.

The Commission adopted the same small business definitions for WCS as it did for broadband PCS.¹² Thus, it defined a "small business" as an entity with average annual gross revenues for the preceding three years not to exceed \$40 million.¹³ The Commission defined a "very small business" as an entity with average annual gross revenues for the preceding three years not to exceed \$15 million.¹⁴ The Commission established bidding credits of 25 percent for small businesses and 35 percent for very small businesses.¹⁵

The SBA recently informed the Commission that the SBA is unable to approve the LMS and WCS definitions because the Commission did not seek comment on specific small business proposals in the *LMS Further Notice* and the *WCS Notice*.¹⁶ See Section 3(a)(2)(C) of the Small Business Act. Herein, we take this opportunity to solicit comments on the specific small business size standards that we adopted for LMS and WCS. Comments are due on or before January 20, 1999. To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. In addition, parties must submit one copy to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street N.W., Washington, D.C. 20554. Comments will be available for public inspection during regular business hours in the Wireless Telecommunications Bureau Public Reference Room, Room 5608, 2025 M Street N.W., Washington, D.C. 20554.

Action by the Commission on January 12, 1999.

For further information concerning this proceeding, contact Ken Burnley or Arthur Lechtman, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

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¹² *WCS Report and Order* at ¶ 194.

¹³ 47 C.F.R. § 27.210(b).

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 27.209.

¹⁶ See Letters to Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration (December 2, 1998), at Attachments A and B.

Attachment A

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

December 2, 1998

Amy Zoslov
Chief (Acting), Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, 5th Floor
Washington, DC 20554

Re: Request for Approval of Small Business Size Standard – Competitive Bidding Rules for VHF
Public Coast Service and Location Monitoring Service

Dear Ms Zoslov:

This is in response to your letter of July 31, 1998, requesting Small Business Administration (SBA) approval of small business size standards for use in the auction of licenses for the two captioned services. The Federal Communication Commission (the Commission) adopted the following size standards for both services:

- ◆ "Small Business" – one with average annual gross revenues that do not exceed \$15 million for the preceding 3 years.
- ◆ "Very Small Business" – one with average annual gross revenues that do not exceed \$3 million for the preceding 3 years.
- ◆ "Small Business Consortium" – a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business.

SBA's decisions:

The SBA hereby approves the size standards for use in the Maritime Communications: Public Coast VHF Stations (VPC) auction. Along with your letter you provided copies of the *Third Report and Order and Memorandum Opinion and Order* together with the relevant comments received on your proposal to adopt a \$15 million size standard for small business and a \$3 million size standard for very small business. Your staff also provided supplemental information on this service to the Office of Size Standards at a meeting on October 11, 1998, when they explained your basis for selecting these size standards. According to your staff, VPC is a very small spectrum and the industry consists primarily of very small businesses. Commenters supported lower standards, though not these specifically, and one supported tiered size standards, similar to those used in other auctions. To be consistent with the size standards established for other services associated with

Attachment B

**U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416**

OFFICE OF THE ADMINISTRATOR

December 2, 1998

Amy J. Zoslov
Chief (Acting), Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, DC 20554

Re: The FCC's Request for Approval of Small Business Size Standards - Competitive Bidding Rules for the following auctions:
Broadband Personal Communications Services (C, D, E and F Blocks)
Wireless Communications Services
Narrowband PCS - Phase III
Paging Services

Dear Ms. Zoslov:

This letter responds, in part, to your requests of May 8, 1997, and of August 27, 1998, that the U.S. Small Business Administration (SBA) approve (1) 10 small business size standards proposed by the Federal Communications Commission ("the Commission") and (2) a very small business category to the scheduled re-auction of Broadband C Block. This letter specifically addresses the small business size standards the Commission adopted for Broadband Personal Communications (PCS) Services (C, D, E and F Blocks), Wireless Communications Services and Paging Services, and proposed for Narrowband PCS - Phase III. With this letter, therefore, SBA has provided the Commission with a decision on its requested size standards for all spectrums addressed in your May 8, 1997, letter.

A. Broadband Personal Communications Services (C, D, E and F Blocks)
Wireless Communications Services
Narrowband PCS - Phase III

Requested Size Standards:

For Broadband PCS and Wireless Communications Services the Commission adopted and for Narrowband PCS - Phase III it proposed a two-tiered definition of "small business," as follows:

- a small business is an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than \$40 million for the preceding 3 years.

Amy J. Zaslav

Page 3

necessity and appropriateness of these standards, and what types of companies may benefit. While some commenters suggest other benefits for small business bidders, they all support adopting the size standards.

SBA Decisions:

SBA approves the \$40 million "small business" and \$15 million "very small business" definitions for use in the Broadband PCS C, D, E and F Block and the Narrowband PCS - Phase III auctions. We note that for these services the Commission's rules on affiliation are the same as those SBA approved for previous auctions. The only substantial difference between these affiliation rules and the SBA's is the addition of a special category for a small business consortium.

SBA recently liberalized its affiliation rule, to provide greater opportunity for small businesses to joint venture on large Government procurements. We support the Commission's effort to similarly broaden the opportunities for small businesses to obtain licenses for these services. However, we recommend that in the future the Commission consider clarifying its affiliation rules. Under the existing language, members of a joint venture are affiliated, as are those who share an identity of interest, common management, common facilities and contractual relationships. This affiliation rule does not indicate that small businesses that form a consortium, when approved for bidding at auctions, are not considered affiliated with one another, and we believe the Commission should modify its affiliation rule to explicitly state an exception from its affiliation provisions for conglomerate organizations.

SBA does not approve the \$40 million "small business" and \$15 million "very small business" definitions for use in the Wireless Communications Services auction. Section 3(e)(2)(C) of the Small Business Act requires that "Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard - (i) is proposed after an opportunity for public notice and comment;" The Notice of Proposed Rulemaking for the Wireless Communications Services, published in the *Federal Register* on November 20, 1996, did not, however, propose any specific size standard; rather, it contained a general description of the subjects and issues involved. A general description does not satisfy the requirements of the Small Business Act for a "proposed size standard" offered for public comment. Therefore, we lack authority to approve the Wireless special size standards.

B. Paging Services

Requested Size Standards:

For Paging Services, the Commission requested approval of the following adopted definitions:

- "Small Business" - an entity with average gross revenues that do not exceed